

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

C.A. NO. 05-CV-11832-GAO

RONNIE JONES, RICHARD BECKERS,)
WALTER R. WASHINGTON, WILLIAM)
E. BRIDGEFORTH, SHAWN N. HARRIS,)
EUGENE WADE, GEORGE)
C. DOWNING, JR., CLARARISE)
BRISTOW, and the MASSACHUSETTS)
ASSOCIATION OF MINORITY LAW)
ENFORCEMENT OFFICERS,)
)
Plaintiffs)
vs.)
)
CITY OF BOSTON, BOSTON POLICE)
DEPARTMENT, and KATHLEEN)
O'TOOLE, as she is Police Commissioner)
for the Boston Police Department,)
)
Defendants)
)

DEFENDANTS' MOTION TO FILE EXHIBIT UNDER SEAL

In this case, ten individuals who tested positive for cocaine in the Boston Police Department's annual hair drug test and/or in pre-employment hair drug test screening have brought suit, alleging that the hair drug test is "flawed, imprecise, unreliable, arbitrary, and racially biased" (Plaintiffs' Memorandum of Law in Support of their Motion to Compel, "Preliminary Statement"). They are joined by the Massachusetts Association of Minority Law Enforcement Officers ("MAMLEO").

Defendants have opposed the Plaintiffs' Motion to Compel, (see docket documents number 46, 51) and now move the Court for permission to file an exhibit to their Opposition with the Court under seal (Exhibit D to their Opposition to Plaintiffs' Motion to Compel).

As grounds therefor, Defendants state that the document in question is a packet of information produced by the laboratory performing hair drug testing for the BPD, Psychemedics that reflects the analysis done on a sample of hair taken from one of the named plaintiffs. The documents reflect that the laboratory reported the hair as positive for an illegal drug.

Defendants move to seal this document as it references a specific individual. This document is relied upon by the Defendants as an example of the type of materials Plaintiffs seek as to non-party officers, for purposes of educating the Court as to the substance of these materials. The identity of the individual donor in this test is not relevant for purposes of the Defendants' Opposition. Defendants are mindful that the validity of the hair test results are at issue in this litigation, and while Defendants maintain that the hair test is not flawed, public filing of the within document would both be invasive of this individual's privacy and would serve no purpose in this discovery dispute.

For the foregoing reasons, the Defendants request that the Court allow it to file Exhibit D in hard copy for the Court's eyes only, that the Exhibit be sealed, and that no copy of Exhibit D be placed in the electronic docket or that maintained by the Court Clerk's office, unless and until this document is produced in open court.

Plaintiffs' counsel have assented to this motion.

Respectfully submitted,
Defendants City of Boston,
Boston Police Department, and
Kathleen O'Toole
By their attorney,

_____/s/ Mary Jo Harris_____
Mary Jo Harris, BBO # 561484
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200 State Street
Boston, MA 02109-2605
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Dated: July 3, 2007

CERTIFICATE OF SERVICE

I, Mary Jo Harris, hereby certify that this document was filed through the ECF system on July 3, 2007, and that a true paper copy of Exhibit D referenced herein is filed with the Court in hard copy with a copy to Plaintiffs' counsel by hand delivery this date.

DATED: July 3, 2007

_____/s/ Mary Jo Harris_____
